IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION No.358 OF 2001
AND
C.M.P.No.1933 OF 2001.

C.Saraswathi ... Petitioner

-Vs-

1.S.Ramachandran
2.M.Chinnaiya ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

For petitioner : Mr.V.Manisekaran

For 2nd Respondent : Mr.G.Mohanarangan

For R.1 : No Appearance

:O R D E R
The above civil revision petition has been filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 23.11.2000 made in I.A.No.653 of 2000 in O.S.No.82 of 1998 by the Court of District Munsif, Sivaganga thereby dismissing the Interlocutory Application filed by the petitioner herein praying to implead her as the second plaintiff in the suit.

2. Tracing the history of the above civil revision petition coming to be filed by the petitioner, what comes to be known is that the petitioner's husband, the second respondent herein, has filed the suit in O.S.No.82 of 1998 based on a pronote dated 1.6.1996 alleged to have been executed in favour of the petitioner herein for a sum of Rs.30 ,000/= by the first respondent herein on a supposed made over given by the petitioner herein in favour of her husband, but actually no endorsement has been effected in the pronote to the said effect. However, the suit has been filed by the husband praying for a decree as prayed for in the suit in his favour.

3. The petitioner would come forward to say that purely by mistake or oversight, in spite of all her intentions, a made over has been given in her husband's favour but the endorsement had not been effected and therefore it has become necessary on her part to become a party to the suit as

the second plaintiff to prosecute the same and therefore she has come forward to file the above application under Order 1 Rule 10 and Section 151 CPC and the said application having been taken on file, the trial Court having conducted an enquiry with due opportunity for both parties to be heard, during which the defendant in the suit would stiffly oppose the implication of the petitioner as the second plaintiff in a suit anonymously filed by her husband without any locus standi to file the same and hence the lower Court would ultimately dismiss the said application filed by the petitioner for her impleadment, testifying the validity of which and praying to set aside the same, the petitioner has come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of revision petition.

4. The short question that falls for consideration, in the above circumstances, is 'whether the lower Court is right in dismissing the application filed by the petitioner for impleadment in a suit filed by her husband in his capacity as the person who has been given the made over of the suit pronote which is the subject matter but without any endorsement effected or supporting document filed to the effect of having given the made over and whether the order passed by the lower Court is sustainable in law?

5. It may be noted that in spite of there being no made over either in the pronote or by any supporting document to the said effect, the suit filed by the present plaintiff, the husband of the petitioner herein, has been bluntly numbered and taken on file by the lower Court which itself cannot be done in law and therefore there is no gainsaying that the suit filed in O.S.No.82 of 1998 has any locus standi to be on file and to be continued since it is the admitted case of the petitioner that only based on the made over given in favour of the plaintiff by the petitioner, the suit has been filed and when such an endorsement having not been produced anywhere, the lower Court has committed grave error in numbering the suit and taking it on its file and therefore the lower Court and the staff of the said Court, who are responsible for entertaining the suit on file are to be severely dealt with in accordance with the disciplinary proceedings.

6. No mention need be necessary that in a suit which has no locus standi to be on the file of the lower Court, there is no question of adding parties on any ground much less on those grounds offered on the part of the petitioner in spite of her being the party in whose favour, the pronote is alleged to have been executed and therefore though the lower Court is right in rejecting the claim of the petitioner for her impleadment as the second plaintiff in the suit, the lower Court should have initiated such measures to undo the very suit filed without any locus standi by her husband in spite of himself not being the person in whose favour the suit pronote has been given but by a third party, the petitioner herein, without herself being a party to the proceeding at least and should have seen that the suit is dismissed or struck off from the rolls on ground of locus standi. But, for what better purpose the lower Court is keeping the suit on file in spite of all the above mentioned facts being revealed through the petition filed by the petitioner for her impleadment is unknown and therefore, in the above given facts and circumstances, the only conclusion that could be arrived at by this Court in the above civil revision petition is not only to dismiss the same but also to issue directions to the lower Court and hence the following order:

In result,
(i)the above civil revision petition does not merit acceptance and it becomes liable only to be dismissed and is dismissed accordingly.
(ii)The fair and decretal order dated 23.11.2000 made in I.A.No.653 of 2000 in O.S.No.82 of 1998 by the Court of District Munsif, Sivagangai is confirmed.
(iii) However, a further direction is issued to the trial Court to immediately initiate such steps regarding the maintainability of the suit and to decide the preliminary legal issue of maintainability of the suit giving an opportunity for both parties to be heard.
(iv)In consideration of the facts and the other circumstances revealed, the petitioner to the facts stated by her, will be at liberty to file a fresh suit based on the pronote which is the subject matter, which is alleged to have been given in her favour either in case the present suit is withdrawn or in the event that it is dismissed as not maintainable by the lower Court.
However, in the circumstances of the case, there shall be no order as to costs.
Consequently, C.M.P.No.1933 of 2001 is also dismissed.

Index: Yes
Internet: Yes

Rao

To

The District Munsif,
Sivagangai.

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